IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 915/2004
(Jeet Singh Vs. State of Rajasthan)

Date of Order : 13/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.S.Gill for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. C.S.Kotwani for Avtar Singh.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner complainant has assailed the order dated 05.10.2004 passed by Additional Sessions Judge No.1, Sri Ganganagar (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 8.7.2004 passed by Chief Judicial Magistrate, Sri Ganganagar (for short 'the trial court' hereinafter) in Criminal Case No. 108/2003 was dismissed.

By order dated 08.07.2004, the trial court took the cognizance of the offence against Palvindra Singh, however, refused to take cognizance against accused Avtar Singh.

I have heard learned counsel for the parties. Perused

the order of both the courts below as also record of the trial court.

It is contended by the learned counsel for the petitioner that the complainant petitioner himself stated that it was Palvindra Singh and Avtar Singh both who inflicted injuries to him. The injuries have specifically been assigned to Avtar Singh also. The statement of petitioner Jeet Singh finds corroborated from the statement of eye witness Ramsingh. Learned counsel further stated that in the injury report, the injury is said to be on neck but it is due to slip of pen stated by Dr. Surendra Mohan who examined the injured, the injury on base of nose has been mentioned in injury report as on neck. Dr. Surendra Mohan made a statement under Section 161 Cr.P.C. before the police clarifying the ambiguity in the injury report and stated that he examined the injured who suffered the injury No.1 on the base of nose and not on neck. On being examined the radiologist, the injury was found to be grievous in nature. Learned counsel submits that the courts below ignored the material evidence and on the saying of Avtar Singh that at the relevant time he was hospitalized, on the plea of alibi refused to take cognizance.

It is settled law that at the stage of taking cognizance, the court is to see from the evidence produced by the police on investigation and the complainant before it as to

whether prima-facie offence is made out or not and if court comes to the conclusion that from the evidence produced, prima-facie the offence is made out, then the court is obliged to take cognizance of the offence or to frame the charge and proceed against the person against whom prima-facie offence is made out. The court below appears to have attached more weight to the plea of alibi of Avtar Singh in refusing to take cognizance of offence against him also.

In the circumstances, therefore, in my view, both the courts below have not considered the material placed before it at the time of taking cognizance.

Consequently, the misc. petition is allowed. The order impugned dated 8.7.2004 passed by the trial court and the order dated 05.10.2004 passed by the revisional court affirming the order of the trial court dated 8.7.2004 are set aside and the matter is remanded back to the trial court to pass a fresh order in accordance with law by holding a further inquiry. The expression further inquiry would mean re-consideration of existing material. Stay petition also stands disposed of. Record of the trial court be returned forthwith.

(H.R.PANWAR),J.

Rp